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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	)
THE PROVISION OF INTERSTATE AND INTERNATIONAL INTEREXCHANGE TELECOMMUNICATIONS SERVICE VIA THE "INTERNET" BY NON-TARIFFED, UNCERTIFIED ENTITIES	)
	)
AMERICA'S CARRIERS TELECOMMUNICATION ASSOCIATION ("ACTA") Petitioner	)
	) **Docket No. RM-8775**
PETITION FOR DECLARATORY RULING, SPECIAL RELIEF, AND INSTITUTION OF RULEMAKING AGAINST:	)
	) DOCKET FILE COPY ORIGINAL
VocalTec, Inc.; Internet Telephone Company; Third Planet Publishing Inc.; Camelot Corporation; Quarterdeck Corporation; and Other Providers of Non-tariffed, and Uncertified Interexchange Telecommunications Services, Respondents.	)

MAY - 8 1996

To the Commission:

INITIAL COMMENTS OF THE NEW MEDIA COALITION FOR MARKETPLACE SOLUTIONS

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Dated: May 8, 1996

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SUMMARY

The Federal Communications Commission ("FCC" or "Commission") has no authority under the Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq. (the "1934 Act"), to regulate software and hardware products used over the Internet. The Internet has heretofore been unregulated and does not fit within the scope of the Commission's jurisdiction under the 1934 Act. In 1934, Congress enacted Title II of that Act to regulate a nearly national monopoly provider of telephone service. Simultaneously, Congress enacted Title III of that Act to allocate scarce radio bandwidth capacity in the public interest. Accordingly, one facet of the FCC's authority was to regulate a monopoly provider and the other to regulate and allocate scarce resources. By contrast, the Internet fits neither category

The Internet is an international computer network consisting, in major part, of software publishers and hardware providers. As such, it is neither a common carrier (Title II) nor a radio service (Title III). Petitioner's attempts to expand the Commission's regulatory reach to include makers of products which provide the *form* and *content* of communications must be rejected. Such a regulatory overreach would be equivalent to the Commission stopping electronic mail ("e-mail") as well as the streams of audio and video which are currently being transmitted over the Internet.

Indeed, the clear intent of Congress as expressed in the Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56. (1996) (the "1996 Act") together with its legislative history, does not support the Commission's assertion of jurisdiction over the Internet or the products used over the Internet. Rather, the entire thrust of the 1996 Act is to allow the marketplace to foster competition, enhance the development of new telecommunications technologies, and moderate

the Commission's regulatory role. Moreover, the Federal Courts have repeatedly cautioned the Commission against expanding its jurisdiction beyond that stipulated by its enabling statute.

The America's Carriers Telecommunication Association Petition For Declaratory Ruling, Special Relief, and Institution of Rulemaking asks the Commission to head in exactly the opposite direction (*i.e.*, to take on an additional, expanding regulatory task). The Interactive Television Association's New Media Coalition For Marketplace Solutions strongly urges the Commission to remain true to its charter, the Congressional intent, and the judicial admonitions by rejecting ACTA's request to regulate the Internet and its products, and thereby ensuring the continued vitality of the Internet technology marketplace, as well as ensuring the public's continued low-cost access to the Internet.

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To the Commission:

INITIAL COMMENTS OF THE NEW MEDIA COALITION FOR MARKETPLACE SOLUTIONS

1. In response to the Commission's Order and Request for Comments, DA 96-414, released March 25, 1996 (hereinafter "*Request for Comments*") and acting through counsel, the Interactive Television Association's New Media Coalition For Marketplace Solutions[1] ("New

[1] The New Media Coalition is affiliated with the Interactive Television Association, a Washington D.C. trade association of manufacturers, developers, operators and entrepreneurs involved in Internet and interactive businesses and issues.

Media Coalition") hereby submits its Initial Comments on the Petition For Declaratory Ruling, Special Relief, and Institution of Rulemaking, filed March 4, 1996 (hereinafter "*Petition*") by the America's Carriers Telecommunications Association ("ACTA" or "Petitioner").[2]

I. BACKGROUND AND INTRODUCTION

2. ACTA, a trade association representing a group of primarily long distance telephone service resellers, asks that the Commission prohibit or regulate the sale of certain computer software and hardware used to transmit voice communications using the Internet.[3] These instruments, known as InternetPhone ("IPhone") and IPhone-type devices, are cutting-edge, high-technology products[4] that allow the transmission of voice and data across the Internet (*i.e.*, permit full duplex voice transmission from one computer station to another). Additionally, Petitioner calls upon the Commission to regulate all types of digitized voice transmissions across cyberspace within the Internet system.[5]

[2] These Initial Comments are timely filed pursuant to the *Request for Comments*, which extended the date for filing Initial Comment to May 8, 1996.

[3] The Internet is an "international computer network of both Federal and non-Federal inter-operable packet switch data networks", which can be accessed through computer terminals in homes and offices. *See* 47 U.S.C. § 230(e)(1). As described by Daniel P. Dern, *The Internet Guide for New Users* 16 (1994): "The Internet today is a worldwide entity whose nature cannot be easily or simply defined. From a technical definition, the Internet is the set of all interconnected IP networks -- the collection of several thousand local, regional, and global computer networks interconnected in real time via the TCP/IP Internetworking Protocol suite."

[4] IPhone software utilizes a voice compression algorithm to minimize bandwidth consumption. with bandwidth of 7.7K per second bits of raw audio data.

[5] In a recent press release, Petitioner based its request that the FCC "exercise jurisdiction over the use of the Internet for unregulated interstate and international telecommunication services" on the fact that "[l]ong distance and international carriers must be approved by the FCC to operate and must file (Continued)

3. Interactive Television Association's New Media Coalition is an organization that includes entities which are developing, manufacturing and using software and hardware to access and navigate the Internet. As such, the Coalition has a direct and compelling interest in the outcome of this proceeding.

4. In its *Petition*, ACTA offers four principal, but highly flawed, arguments for asserting that the Commission should extend its jurisdiction to encompass digitized voice transmissions on the Internet. First, ACTA claims that the Commission has jurisdiction under the 1934 Act because such transmissions are "a unique form of wire communication" and a scarce resource meriting government regulation. *Petition* at 5. Second, ACTA argues that the Commission has jurisdiction because case law precedent and the 1996 Act establish that the purveyors of such transmissions represent interstate telecommunications carriers that should be subject to federal regulation. *Petition* at 6-8. Third, ACTA asserts that case law precedent and the analogy of the Commission's regulatory measures over cable television justify injunctive action against voice transmissions over the Internet. *Petition* at 8-9. Fourth, ACTA presents the empty rhetorical argument that Commission action is needed to "preserve fair competition and the health of the Nation's telecommunications industry." *Petition* at 9-10.

5. Below, New Media Coalition demonstrates the hollowness of ACTA's arguments. In particular, ACTA's claims ignore the overriding issue that the Internet is neither a monopolistic common carrier nor a scarce resource necessitating government regulation in order

tariffs before both the FCC and state public service commissions." Petitioner's press release additionally states that "the misuse of the Internet as a way to 'by-pass' the traditional means of obtaining long-distance service could result in a significant reduction of the Internet's ability to transport its ever enlarging amount of data traffic."

to protect the public interest. Historically, government regulation of the telephone and broadcasting industries has been justified by those respective underlying policy objectives. However, these justifications are inappropriate within the context of the Internet. More specifically, these Comments display that: (1) the Commission has no authority, either statutory or under case law precedents, for expanding its jurisdiction to include digitized voice transmissions on the Internet: (2) various other public policy and Constitutional considerations militate strongly against the Commission's assertion of jurisdiction; and (3) even if *arguendo* the Commission had jurisdiction to do so, it does not have the authority to grant ACTA's request for injunctive relief because such action would impermissibly and radically alter, *not* preserve, the developing industry's status quo.

II. ARGUMENT

A. THE COMMISSION HAS NO LEGAL AUTHORITY UNDER STATUTES OR CASE LAW PRECEDENTS FOR REGULATING THE INTERNET

1. The Commission Has No Authority To Regulate Use of the Internet Under the Communications Act Of 1934 or the Telecommunications Act of 1996

6. Petitioner claims that the 1934 Act provides the Commission with explicit jurisdiction over the Internet and its use. In particular, Petitioner cites Section 151 of that Act, which states in relevant part:

> [F]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication. . . there is created . . . the "Federal Communications Commission"

47 U.S.C. § 151, *Petition* at 5. Nevertheless, there is nothing in this language nor in other sections of the 1934 Act that suggest Congress intended the agency to regulate the use of a technology such as the Internet through that Act. Rather, Congress charged the FCC with regulating monopoly telephone service and common carriage (Title II) and allocating scarce and finite resources in the public interest (Title III). Such Commission regulation of telecommunications by wire and radio was necessary to avoid interference and ensure universal access. This rationale does not apply to the Internet because it is neither a scarce nor finite resource. Indeed, unlike radio and television broadcasters who must operate within a narrow bandwidth in order to avoid interference problems, on the Internet, there are no structural limitations on the amount of bandwidth that service providers can make available to users. Nor does the monopoly justification apply in this era of exploding telecommunications competition, when the Commission is lifting its regulatory hand from common carrier services. Accordingly, concern for the public interest together with the economics of the Internet are fundamentally different from the telephone and broadcast media over which the Commission has traditionally asserted jurisdiction. In construing the intent of Congress in the 1934 Act and the 1996 Act, the Commission must take note of this different environment and not extend its jurisdictional reach to include the Internet.

7. Although the Commission has previously concluded that computer data services may be the subject of its ancillary jurisdiction under Section 152 of the 1934 Act as incidental transmissions over the interstate telecommunications network, it has specifically declined to exercise jurisdiction to institute a regulatory scheme. The Commission refused to assert common carrier jurisdiction because of its conclusion that the market for such services was truly

competitive and that marketplace forces already protected the public interest by maintaining reasonable rates and availability of services. *Computer II Final Decision*, 77 FCC 2d 384, 432-33 (1980), *recon.*, 84 FCC 2d 50 (1980), *further recon.*, 88 FCC 2d 512 (1981), *aff'd sub nom.*: *Computer and Communications Indust. Ass'n v. FCC*, 693 F.2d 198, 209-214 (D.C. Cir. 1982), *cert. den.*, 461 U.S. 938 (1983).

8. The new definition of "information services" in the 1996 Act eliminates any doubts about continued FCC jurisdiction, ancillary or otherwise, over computer data and information services. Section 153(a)(41), as added by the 1996 Act 47 U.S.C. § 153(a)(41) defines "information services" as:

> the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, *and includes electronic publishing*, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

Accordingly, the Internet falls squarely within the Commission's definition of "information services" and, as such, is clearly outside of the Commission's regulatory reach.

9. Finally, it should be noted that the *Petition* targets companies that publish software for use on the Internet. By its terms, therefore, the *Petition* is not addressed at *communications*, which is arguably a proper focus of the Commission, but rather at makers of products that provide the *form* and *content* of a given communication. There can be no question that such software and its publishers are not subject to Commission jurisdiction.

2. The Telecommunications Act of 1996 Demonstrates Congressional Support for an Unregulated Internet

10. Close consideration of the underlying purpose and theme of the 1996 Act clearly supports the rejection of ACTA's petition. Congressional passage of the 1996 Act was motivated by a desire to free the emerging competitive telecommunications marketplace from monopoly-era regulatory restraints. The 1996 Act was manifestly intended:

> to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.

S. Conf. Rep. No. 230, 104th Cong., 2nd Sess. 1 (1996) Congress did not intend the Commission to use the 1996 Act to shield telecommunications providers from competition. Rather, the 1996 Act's primary purpose was to develop and encourage competitive markets. *See, e.g., 1996* Act, Part II - Development of Competitive Markets, at P.L. 104-104, 110 Stat. 56, 61 (1996) (codified at 47 U.S.C. §251).

3. *United States v. Southwestern Cable Co.* and Other Recent Cases Contradict ACTA's Claim that the Commission has Authority to Regulate the Internet

11. Contrary to Petitioner's assertion, the case law does not support the Commission's regulation of the Internet and its use. *See Petition* at 7. Rather, the case law dictates that the Commission not regulate the Internet because such regulation would be neither reasonably ancillary to the effective performance of its various responsibilities, nor would it preserve the status quo.

12. In *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968), the Supreme Court reasoned that Section 2(a) of the 1934 Act, 47 U.S.C. § 152(a), granted the Commission

certain limited power to regulate cable television because it was "reasonably ancillary to the effective performance of the Commission's various responsibilities *for the regulation of television broadcasting*." *Id.* at 178 (emphasis added). The Court upheld the extension of the Commission's jurisdiction over cable television since "the orderly development of an appropriate system of local television broadcasting" depended upon regulation of cable operations. *Southwestern Cable*, 392 U.S. at 177-78.

13. Nevertheless, the policy concerns related to cable television that existed in the 1960s do not exist today in the context of the Internet. There is no showing that the Internet poses the same threat to traditional interexchange long distance carriage as cable television did to broadcast operations in the 1960s, or that it is even related in the same manner (*i.e.*, where one broadcast TV station might depend upon cable television for actual availability of service). Instead, regulation of the Internet by the Commission would produce the opposite result of that produced in the 1960s, in that such regulation would undermine and deter the rapid development of a means of information exchange which is hotly desired by consumers, educators, and businesses. Such a result would frustrate the 1996 Act's intentions to foster competition and advanced services.

14. Furthermore, unlike jurisdiction over cable television, which was ancillary to the already established jurisdiction over the broadcast television industry, the Commission does not have any authority upon which to base ancillary jurisdiction over the Internet or its use. The Commission does not have "other responsibilities" concerning information services and the Internet.[6] Rather, the Internet primarily provides information services specifically excluded from

[6] Petitioner implies that *Southwestern Cable* confers upon the Commission broad and sweeping (Continued)

Commission jurisdiction. *See* text *supra* at 6 discussing 1996 Act's definition of "information services".

15. More recent precedent also compels the conclusion that the Commission's "reasonably ancillary" authority is limited and, therefore, that the Commission has no authority to regulate the Internet. In *Federal Communications Commission v. Midwest Video Corp.*, 440 U.S. 689 (1979), the Supreme Court invalidated certain Commission rules which imposed various access and capacity requirements on cable television systems. The Court found that those rules exceeded the Commission's authority because they were not reasonably ancillary to the effective performance of the Commission's various responsibilities. *Midwest Video*, 440 U.S. at 708-09.

16. In *Religious Technology Center v. Netcom On-Line Comm.*, 907 F. Supp. 1361 (N.D. Cal. 1993), a federal district court explained the difference between Internet providers and common carriers, which are under the jurisdiction of the Commission: "Internet providers are not natural monopolies that are bound to carry all the traffic that one wishes to pass through them, as with the usual common carrier." *Id.* at 1369, fn.12 (*citing* Information Infrastructure Task Force, *Intellectual Property and the National Information Infrastructure: The Report of the Working Group on Intellectual Property Rights* 66, 122 n.392 (1995), *citing Midwest Video Corp.*, 440 U.S. at 701). In other settings, courts have repeatedly admonished the Commission not to read

ad hoc jurisdiction. The Court in *Southwestern Cable* explicitly rejected this interpretation, by declining to "determine in detail the limits of the Commission's authority to regulate . . . ." 392 U.S. at 178. Likewise, the "authority which [the Court recognized] is restricted to that reasonably ancillary to the effective performance of the Commission's various responsibilities . . . ." *Id.* In fact, the Court "express[ed] no views as to the Commission's authority, if any, to regulate . . . under any other circumstances or for any other purpose." *Id.* This language alone prohibits Petitioner's reliance on *Southwestern Cable* to support its assertion that the Commission can regulate the Internet.

into the 1934 Act authority beyond the clear language of its enabling statute.[7] The Commission cannot accept ACTA's invitation to do so with the Internet.

B. CONSTITUTIONAL LAW AND PUBLIC POLICY DICTATE THAT THE COMMISSION SHOULD NOT INTERFERE WITH THE INTERNET

1. Assertion of FCC Jurisdiction Raises Alarming First Amendment Issues

17. The Commission's assertion of jurisdiction over the Internet would raise serious constitutional concerns as the Courts have held that computer software is "sufficiently imbued with elements of communication to fall within the scope of the First and Fourteenth Amendments." *Bernstein v. United States Department of State*, 1996 WL 186106, at. 7 (N.D. Cal. 1996) (*quoting Spence v. Washington*, 418 U.S. 405, 409 (1974)). In *Bernstein*, the speech in question was an encryption system, written in a computer language called "source code", rather than in English. *Id.* at 7.

18. In deciding that "source code" was speech and not expressive conduct, the court in *Bernstein* reasoned that this encryption system is a "sophisticated and complex system of understood meanings --[and that] is what makes it speech. Language is by definition speech, and the regulation of any language is the regulation of speech." *Id.* at 7-8. As a result of this definition, the court held that "[f]or the purposes of First Amendment analysis, this court finds that source code is speech." *Id.* at 9.

[7] *See American Tel. & Tel. Co. v. F.C.C.*, 978 F.2d 727 (D.C. Cir. 1992) (*citing Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204 (1988) (vacating the FCC's permissive detariffing rules, as applied in the *Fourth Report and Order* of the *Competitive Common Carrier* proceeding); *see also MCI Telecommunications Corp. v. American Telephone & Telegraph Co.* 114 S.Ct. 2223 (1994) (holding that "the FCC's permissive detariffing policy is not a valid exercise of its §203(b)(2) authority to 'modify any requirement'"); *Florida Public Telecommunications Ass'n v. F.C.C.*, 54 F. 3d 857 (D.C. Cir. 1995) (invalidating rules that exceeded jurisdiction of Telephone Operator Consumer Services Information Act of 1990).

19. In light of the *Bernstein* rationale, it is quite clear that any Commission regulation of the Internet or its software, would fall to the Constitutional protections of the First and Fourteenth Amendments.

2. The Rapidly Evolving Internet Must Remain Free Of Commission Interference To Allow The Free Play Of Market Forces

20. Petitioner mischaracterizes digitized voice data transmissions as a "misuse" of the Internet and as an interference with the Internet's "customary" use. In part, the Internet exists to exchange data. Whether digitized sound ("voice") or digitized signals, data is data (*i.e.*, information services). Indeed, it is ludicrous to speak of "customary" usage in an industry still in its infant stages. The Petition itself concedes the evolving nature of the Internet and services developing with it: "[the Internet] is a resource whose benefits are still being explored and whose value is not fully realized." *Petition* at 5.

21. Nevertheless, Petitioner submits that it is incumbent upon the FCC to exercise jurisdiction over the use of the Internet. *Petition* at 4. But the underlying Congressional policy of the 1996 Act is the promotion of the continued development of the Internet and other interactive computer services; and preserving the vibrant and competitive free market that presently exists for the Internet and other interactive computer services. Regulation of such services on the Internet could lead to the restraint or even the elimination of free market competition on the Internet.

22. The FCC's attempt to regulate such transmissions could lead to the imposition of taxes and tariffs for data transmissions, or permit the telephone companies to charge Internet Service Providers ("ISPs") a variable or set amount that would be passed along to the ISPs'

customers. ISPs would have to charge more to cover the costs of such a regulation. FCC regulation would undermine and hamper many small entrepreneurs whose technological advances have assisted the public in gaining access to the Internet. All of this would be directly contrary to the intent of Congress which is clearly reflected in the 1996 Act. In sum, by remaining free from FCC regulation, entrepreneurs and ISPs will continue to increase their competition for customers, keep the costs of Internet use low, develop new technology, and keep the Internet available to everyone, all as Congress envisioned.[8]

3. Internet Technological Advances Will Outpace FCC Regulations

23. Currently, new methods of Internet data transmission evolve daily. The potential uncertainties that would be created by a lengthy FCC rulemaking would unnecessarily stretch the Commission's limited resources and could stifle the development and availability of new technologies for Internet users. In addition, FCC regulation of the Internet would deter and delay new technological advances because any new advances would require FCC approval. By the time the new technology would have been approved, it would have already been surpassed by a new, improved data system. Accordingly, rather than foster competition and advanced services as required by the 1996 Act, Commission regulation of software publishers and other information products used over the Internet would have precisely the opposite affect.

4. The Commission Should Not Expand Its Jurisdiction Over The Internet While Diminishing It In Other Areas

24. Changes in the interexchange market over the past decade have caused the FCC to review its regulatory regime for interstate, domestic, interexchange telecommunications services.

[8] Section 706 of the 1996 Act in particular directs that regulators stimulate the timely deployment of advanced telecommunications services, not delay it. 47 U.S.C. § 157 note.

Pursuant to the forbearance authority provided in the 1996 Act, the FCC has decided that it will adopt a mandatory detariffing policy for domestic services of non-dominant, interexchange carriers.[9] *See Interstate, Interexchange Marketplace and Implementation of Section 254(g) of the Commission Act of 1934, as amended. Notice of Proposed Rulemaking*, 61 Fed. Reg. 14,717 By these and related proposals, the FCC recognized that competitive market forces, not regulatory requirements, are the best vehicles for protecting the public interest and fostering the continuing development of competition in the interexchange marketplace. The Commission should follow its own example in the interexchange area and decline to regulate the fast-moving Internet and thereby continue to implement Congress' intent to keep the Internet "unfettered by federal or state regulation." Conf. Report, *supra* at 1

5. FCC Regulation of Digitized Voice Data Transmissions Is Not Feasible

25. The Commission should reject Petitioner's request for the assertion of Commission jurisdiction because data transmissions cannot be regulated. Indeed, digitized voice transmissions cannot be feasibly distinguished from e-mail transmissions, the data related to games or other types of data transmissions. Accordingly, monitoring of the Internet to achieve a method for regulating a digitized voice transmission surcharge would cause the Commission to become the world's largest surveillance agency, monitoring the content of millions of data transmissions. Such a result is well beyond the FCC's regulatory authority, not to mention its

[9] The FCC also proposes to eliminate the prohibition against bundling customer premises equipment with the provision of interstate, interexchange services by non-dominant interexchange carriers. In addition, the FCC is considering whether to reduce or eliminate the separation requirements for non-dominant treatment of local exchange carriers in their provision of certain interstate, interexchange services.

budgetary resources or technological capabilities and would, no doubt, draw strong challenges of "Orwellian," constitutionally-prohibited intrusions into free speech.

C. EVEN IF THE FCC HAS JURISDICTION, SPECIAL RELIEF IN THE FORM OF FREEZING THE *STATUS QUO* IS AN IMPERMISSIBLE POLICY OPTION

1. Unlike the Stay in *Southwestern Cable*, Granting Petitioner's Request for Injunctive Relief Would Radically Destabilize the *Status Quo*

26. *Southwestern Cable* addressed whether the Commission had the authority to issue an injunctive order designed to maintain the status quo. Although the Supreme Court upheld such authority, Petitioner fails to point out that the impact of the injunctive relief it seeks will be dramatically different from that which occurred in *Southwestern Cable*. *See Petition* at 7 n.4.

27. Petitioner requests that the Commission "issue an order to the Respondents to immediately stop arranging for, implementing, and marketing non-tariffed, uncertified telecommunications services," and, thus, prohibit all new access to potential customers. *Petition* at 4. Yet the Commission's Order in *Southwestern Cable* did not prohibit all new access to potential customers. *Petition* at 7 n.4. Accordingly, grant of Petitioner's request would represent a radical shift in the status quo and would be an unwarranted intrusion by the FCC into the Internet and computer software markets. In addition, such a result would deny Respondents the benefit of the efforts and enormous amounts of capital which they have already invested in arranging, implementing and marketing tools for digitized voice transmissions on the Internet.

2. Petitioner's Alleged Harms Are Based on Erroneous Facts and Are Highly Speculative In Nature

28. Petitioner contends that:

> [I]t is not in the public interest to permit long distance service to be given away, depriving those who must maintain the telecommunications infrastructure of the revenue to do so, and that it is not in the public interest for these select

telecommunications carriers to operate outside the regulatory requirements applicable to all other carriers.

Petition at i. There Petitioner goes again, mischaracterizing the facts to suit its theories. Long distance telephone service, utilized to transmit digitized voice, is not "given away". Rather, the long distance cost associated with all Internet data transmissions is included in the monthly access fee which the personal computer ("PC") user pays to ISPs. The ISPs purchase long distance service from long distance carriers and recover their costs in the monthly fees they charge to PC users. Indeed, the ISPs' transmission of a digitized voice transmission is no different than the transmission of an e-mail message.

29. Internet digitized voice transmissions (along with video) will help to increase long distance utilization rates which in turn will increase revenues for traditional providers of network services.[10] Accordingly, those using the Internet to transmit digitized voice pay their fair share of the costs and, in so doing, contribute to the "health" of the Nation's telecommunications infrastructure.

[10] In addition, this new technology will not mark the extinction of the "PBX" because in order to run the Internet Phone, *both* users will need at a minimum the following items: (1) 486SX PC with 25 MHz and 8 MB RAM; (2) Windows 3.1 and a Winsock 1.1 compatible TCP/IP Internet Connection; and (3) Windows-compatible audio board, a microphone and a speaker. Two complete sets of this hardware easily costs several thousand dollars.

III. CONCLUSION

The Commission has much to address in the aftermath of the 1996 Act. Some eighty rulemakings are in play to implement the market-freeing policies embodied in the new law. Nothing therein empowers or enlists the FCC to regulate the Internet or its uses. Indeed, such an extension of its regulatory reach would be contrary to the competitive initiatives embodied in the 1996 Act and its legislative history. This is not an era of protecting the status quo. Rather, it is one in which innovation and ingenuity are to be promoted by the lifting of regulatory structures. Indeed, just as Mr. Morse's telegraph challenged the Pony Express and Mr. Ford's Model-T challenged the manufacturers of buggy whips, so too the positive, competitive forces of the Internet must be left free to stimulate market-based responses, and thereby advance the public's interest in low-cost Internet access.

A competitive telecommunications environment - the goal of the 1996 Act - should be encouraged. For these and the other reasons set forth above, the Commission should swiftly dismiss or deny the ACTA *Petition*.

Respectfully submitted,

NEW MEDIA COALITION FOR MARKETPLACE SOLUTIONS

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CERTIFICATE OF SERVICE

I, Tracy M. Powell, a secretary in the law offices of Patton Boggs, L.L.P. do hereby state and affirm that copies of the foregoing "Initial Comments Of The New Media Coalition For Marketplace Solutions", was served in the manner indicated, this 8th day of May 1996, on the following:

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